

## § 1.7

## 37 CFR Ch. I (7–1–15 Edition)

and received in the Office on the date in question.

(g) *Submission of the national stage correspondence required by § 1.495 via the Office electronic filing system.* In the event that the Office has no evidence of receipt of the national stage correspondence required by § 1.495, which was submitted to the Office by the Office electronic filing system, the party who submitted the correspondence may petition the Director to accord the national stage correspondence a receipt date as of the date the correspondence is shown to have been officially submitted to the Office.

(1) The petition of this paragraph (g) requires that the party who submitted such national stage correspondence:

(i) Informs the Office of the previous submission of the correspondence promptly after becoming aware that the Office has no evidence of receipt of the correspondence under § 1.495;

(ii) Supplies an additional copy of the previously submitted correspondence;

(iii) Includes a statement that attests on a personal knowledge basis, or to the satisfaction of the Director, that the correspondence was previously officially submitted; and

(iv) Supplies a copy of an acknowledgment receipt generated by the Office electronic filing system, or equivalent evidence, confirming the submission to support the statement of paragraph (g)(1)(iii) of this section.

(2) The Office may require additional evidence to determine if the national stage correspondence was submitted to the Office on the date in question.

[58 FR 54501, Oct. 22, 1993; 58 FR 64154, Dec. 6, 1993; 61 FR 56447, Nov. 1, 1996; 62 FR 53180, Oct. 10, 1997; 64 FR 48917, Sept. 8, 1999; 65 FR 54657, Sept. 8, 2000; 65 FR 76772, Dec. 7, 2000; 68 FR 14336, Mar. 25, 2003; 68 FR 48288, Aug. 13, 2003; 69 FR 49997, Aug. 12, 2004; 69 FR 56536, Sept. 21, 2004; 72 FR 2775, Jan. 23, 2007; 77 FR 42173, July 17, 2012; 77 FR 46624, Aug. 6, 2012; 78 FR 62394, Oct. 21, 2013; 79 FR 63039, Oct. 22, 2014; 80 FR 17952, Apr. 2, 2015]

### **§ 1.7 Times for taking action; Expiration on Saturday, Sunday or Federal holiday.**

(a) Whenever periods of time are specified in this part in days, calendar days are intended. When the day, or the last day fixed by statute or by or under this part for taking any action

or paying any fee in the United States Patent and Trademark Office falls on Saturday, Sunday, or on a Federal holiday within the District of Columbia, the action may be taken, or the fee paid, on the next succeeding business day which is not a Saturday, Sunday, or a Federal holiday. See § 90.3 of this chapter for time for appeal or for commencing civil action.

(b) If the day that is twelve months after the filing date of a provisional application under 35 U.S.C. 111(b) and § 1.53(c) falls on Saturday, Sunday, or on a Federal holiday within the District of Columbia, the period of pendency shall be extended to the next succeeding secular or business day which is not a Saturday, Sunday, or a Federal holiday.

[65 FR 14871, Mar. 20, 2000, as amended at 78 FR 62395, Oct. 21, 2013]

### **§ 1.8 Certificate of mailing or transmission.**

(a) Except in the situations enumerated in paragraph (a)(2) of this section or as otherwise expressly excluded in this chapter, correspondence required to be filed in the U.S. Patent and Trademark Office within a set period of time will be considered as being timely filed if the procedure described in this section is followed. The actual date of receipt will be used for all other purposes.

(1) Correspondence will be considered as being timely filed if:

(i) The correspondence is mailed or transmitted prior to expiration of the set period of time by being:

(A) Addressed as set out in § 1.1(a) and deposited with the U.S. Postal Service with sufficient postage as first class mail;

(B) Transmitted by facsimile to the Patent and Trademark Office in accordance with § 1.6(d); or

(C) Transmitted via the Office electronic filing system in accordance with § 1.6(a)(4); and

(ii) The correspondence includes a certificate for each piece of correspondence stating the date of deposit or transmission. The person signing the certificate should have reasonable basis to expect that the correspondence would be mailed or transmitted on or before the date indicated.

(2) The procedure described in paragraph (a)(1) of this section does not apply to, and no benefit will be given to a Certificate of Mailing or Transmission on the following:

(i) *Relative to Patents and Patent Applications*—

(A) The filing of a national patent application specification and drawing or other correspondence for the purpose of obtaining an application filing date, including a request for a continued prosecution application under § 1.53(d);

(B) Papers filed in trials before the Patent Trial and Appeal Board, which are governed by § 42.6(b) of this title;

(C) Papers filed in contested cases before the Patent Trial and Appeal Board, which are governed by § 41.106 (f) of this title;

(D) The filing of an international application for patent;

(E) The filing of correspondence in an international application before the U.S. Receiving Office, the U.S. International Searching Authority, or the U.S. International Preliminary Examining Authority;

(F) The filing of a copy of the international application and the basic national fee necessary to enter the national stage, as specified in § 1.495(b).

(G) The filing of a written declaration of abandonment under § 1.138;

(H) The filing of a submission under § 1.217 for publication of a redacted copy of an application;

(I) The filing of a third-party submission under § 1.290;

(J) The calculation of any period of adjustment, as specified in § 1.703(f); and

(K) The filing of an international design application.

(ii) [Reserved]

(iii) *Relative to Disciplinary Proceedings*—

(A) Correspondence filed in connection with a disciplinary proceeding under part 11 of this chapter.

(B) [Reserved]

(b) In the event that correspondence is considered timely filed by being mailed or transmitted in accordance with paragraph (a) of this section, but not received in the U.S. Patent and Trademark Office after a reasonable amount of time has elapsed from the time of mailing or transmitting of the

correspondence, or after the application is held to be abandoned, or after the proceeding is dismissed or decided with prejudice, or the prosecution of a reexamination proceeding is terminated pursuant to § 1.550(d) or § 1.957(b) or limited pursuant to § 1.957(c), or a requester paper is refused consideration pursuant to § 1.957(a), the correspondence will be considered timely if the party who forwarded such correspondence:

(1) Informs the Office of the previous mailing or transmission of the correspondence promptly after becoming aware that the Office has no evidence of receipt of the correspondence;

(2) Supplies an additional copy of the previously mailed or transmitted correspondence and certificate; and

(3) Includes a statement that attests on a personal knowledge basis or to the satisfaction of the Director to the previous timely mailing, transmission or submission. If the correspondence was sent by facsimile transmission, a copy of the sending unit's report confirming transmission may be used to support this statement. If the correspondence was transmitted via the Office electronic filing system, a copy of an acknowledgment receipt generated by the Office electronic filing system confirming submission may be used to support this statement.

(c) The Office may require additional evidence to determine if the correspondence was timely filed.

[58 FR 54502, Oct. 22, 1993; 58 FR 64154, Dec. 6, 1993, as amended at 61 FR 56447, Nov. 1, 1996; 62 FR 53181, Oct. 10, 1997; 67 FR 523, Jan. 4, 2002; 68 FR 48288, Aug. 13, 2003; 69 FR 49997, Aug. 12, 2004; 69 FR 56536, Sept. 21, 2004; 72 FR 2775, Jan. 23, 2007; 72 FR 18904, Apr. 16, 2007; 73 FR 47684, Aug. 14, 2008; 77 FR 42173, July 17, 2012; 80 FR 17953, Apr. 2, 2015]

### § 1.9 Definitions.

(a)(1) A national application as used in this chapter means either a U.S. application for patent which was filed in the Office under 35 U.S.C. 111, an international application filed under the Patent Cooperation Treaty in which the basic national fee under 35 U.S.C. 41(a)(1)(F) has been paid, or an international design application filed under